

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

MARSHALL A. DRAYTON, II,	:	
Plaintiff,	:	
	:	
v.	:	No. 19-cv-1265
	:	
BERKS COUNTY JAIL SYSTEM, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this 9th day of April, 2019, upon consideration of Plaintiff Marshall A. Drayton II's Motion to Proceed *In Forma Pauperis* (ECF No. 1), Prisoner Trust Fund Account Statement (ECF No. 3), and his *pro se* Complaint (ECF No. 2), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED**.
2. Marshall A. Drayton II, #2011-4654, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court hereby directs the Warden or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Drayton's inmate account; or (b) the average monthly balance in Drayton's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Drayton's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Drayton's inmate account until the fees are paid. Each payment shall reference the docket number for this case.

3. The Clerk of Court is directed to **SEND** a copy of this order to the Warden of the Berks County Jail.

4. The Complaint is **DEEMED** filed.

5. The Complaint is **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim for the reasons discussed in the Court's Memorandum, except for Drayton's excessive force claim against Officer Spotts based on his allegation that Officer Spotts directed the shooting of an assault rifle into his cell to wake him up.

6. Drayton may file an amended complaint within thirty (30) days of the date of this Order in the event he can state a plausible basis for a claim against the Defendants. Any amended complaint must clearly identify all defendants in the caption of the amended complaint and must clearly state the basis for Drayton's claims against each defendant. Upon the filing of an amended complaint, the Clerk of Court shall not make service until so **ORDERED**.

7. The Clerk of Court shall **SEND** Drayton a blank copy of the Court's form complaint to be used by a *pro se* plaintiff filing a civil action in this Court bearing the above civil action number. Drayton may use this form to file an amended complaint if he chooses to do so.

8. If Drayton fails to file an amended complaint, the Court will direct service on Officer Spotts only.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.
United States District Judge